

### REMARKS

Claims 1-42 are pending in this application. Claims 4, 5, 18-20, 24-29, 41 and 42 are withdrawn from consideration as not reading on the elected species. Claim 1 is amended herewith. Claims 2, 6, and 40 are cancelled herewith. Claims 43 and 44 are added herewith. Thus claims 1, 3, 7-17, 21-23, and 40, 43 and 44 are under examination. Support for the new and amended claims can be found throughout the application and in the claims as originally filed. Please consider the following remarks.

#### Restriction/Election and Rejoinder

In addition to the claims under examination, claims in restriction group II are pending (claims 41-42). Claims 41-42, although not presently under examination, have been amended to include all of the limitations of claim 1. Once the claims presently under examination are deemed allowable, Applicants request rejoinder and examination of claims 41-42 (restriction group II), as permitted under M.P.E.P. § 821.04.

Claims 1, 3, 7-17, 21-23, and 40 read on the originally elected species, Group 1 drawn to the species of Fig. 1. Once the claims presently under examination are deemed allowable, Applicants respectfully request consideration and search of additional species (i.e., those recited in withdrawn claims 4, 5, 18-20, and 24-39) as provided under M.P.E.P. § 809.02(a).

#### The Claims

The presently pending claims relate to an oral care device. The oral care device includes a body defining a longitudinal axis having a head shaped for insertion into the oral cavity and a rocking element mounted on the head. The rocking element includes a central portion and a plurality of protrusions extending radially from the central portion along the longitudinal axis of the oral care device. In some instances, the protrusions taper from a relatively wide base to a relatively narrow tip in which the tips are shaped to penetrate the interproximal and subgingival regions of the oral cavity. In other instances, the protrusions comprise side surfaces that define an arc having a radius of curvature from about 0.150 to 0.175.

35 U.S.C. § 112

Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the word "tips" was objected to as lacking antecedent basis. Claim 6 is cancelled herewith, rendering the rejection with respect to this claim moot. Each of claims 7-8 depends from claim 1, which has been amended to recite tips. Accordingly, the term "tips" in claims 7 and 8 has the required antecedent basis, and Applicants request that this rejection be withdrawn.

35 U.S.C. § 102

Claims 1-3, 6, 17, 22, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,246,867 to Thomas ("Thomas"). Thomas discloses a toothbrush that includes a combined buffing and massaging element, which is formed of rubber or other soft, flexible and preferably elastic material. The arcuate face of the element is provided with small transversely disposed ribs or corrugations. Claim 1 features an oral care device including a body and a rocking element that includes a plurality of protrusions extending radially therefrom. The protrusions are further defined both structurally, i.e., the protrusions taper from a relatively wide base to a relatively narrow tip, and functionally, i.e., the protrusions are shaped to penetrate the interproximal and subgingival regions of the oral cavity. A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art and in the context in which it is used. (See M.P.E.P. §2173.05(g).)

Applicants have disclosed the relationship of the shape of the protrusions to the function of penetrating the interproximal and subgingival regions. This relationship is shown in Figures 3, 3A, and 3B and discussed on page 4, lines 19-23 of Applicant's specification as follows:

"(b)ecause the tips 32 are relatively thin, as the rocking element 20 passes over the teeth, the tips 32 will penetrate into the interproximal regions. Side surfaces 35 will rub against and clean the teeth in the interproximal region, and face surface 33 will tend to contact the gums, resulting in massaging and cleaning of the supragingival area." (Emphasis added.)

The phrase “shaped to penetrate the interproximal and subgingival regions of the oral cavity,” when read in the context of the specification and the figures, conveys a structure including protrusions that are long enough, thin enough, rigid enough, and positioned to enter the interproximal region of the users teeth.

In contrast, one of skill in the art reading Thomas would understand, based on the text and figures of Thomas, that the oral care device disclosed in Thomas does not include a feature that would penetrate the interproximal regions of the user's teeth. Rather, one of skill in the art reading Thomas would understand that the rocking member featured in Thomas would engage the teeth with rubbing contact, thus more effectively polishing the teeth, and also applying helpful massage to the gums. (See Thomas Col. 1, lines 13-27.) In view of the foregoing, Applicants assert that Thomas fails to teach each element recited in the pending claims, and requests that the corresponding rejection be withdrawn.

Claims 1-3, 6, 22, 23, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,320,562 to Birch (“Birch”). Birch discloses an oral care device that includes one or more gum massaging means in combination with a toothbrush. Birch does not teach or suggest an oral care device that includes a rocking element having a central portion and a plurality of protrusions extending radially therefrom along the longitudinal axis of the body of the oral care device. Birch does disclose massaging means that include a plurality of tips secured to a body, which is then secured to the base of an oral care device. However, in each instance where Birch discloses massaging means the plurality of tips extend from the body along the horizontal axis of the toothbrush. (See e.g., Figs. 1, 2, 3, 4, 8, 9, 10, 11, and 12.) Accordingly, Birch fails to teach each element of the claims, and thus does not anticipate the claims. In view of the foregoing, Applicants request that the rejection be withdrawn.

35 U.S.C. § 103

Claims 7-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Birch or Birch in view of UK 2,214,420 (“420”). All of claims 7-16 and 21 are dependent from claim 1 and thus incorporate the features of claim 1.

For at least the reasons discussed above, Birch does not teach each limitation featured in claim 1. Moreover Birch does not suggest each feature of claim 1. Claim 1 features a rocking element having protrusions extending along the longitudinal axis of the body of an oral care device. Birch teaches away from this feature, and instead teaches a massaging means having protrusions extending along the horizontal axis of the oral care device. In the pending claims, the alignment of the protrusions along the longitudinal axis, together with the rocking of the rocking element, allows the protrusions to penetrate into the interproximal region of the teeth. Nothing in Birch teaches or suggests that the elements penetrate the interproximal region of the teeth, as recited in claim 1, nor would they inherently do so. Rather, the protrusions disclosed in Birch are shaped and positioned to massage the gum surface. Because Birch does not teach or suggest each element of the claimed invention, Birch does not render the pending claims *prima facie* obvious, and Applicants request that the corresponding rejection be withdrawn.

'420 relates to toothbrushes having a brush portion in the form of a unitary plastics molding. '420 does not cure the deficiency of Birch, as '420 does not teach or suggest an oral care device having a rotating element with protrusions extending along the longitudinal axis of the oral care device. Accordingly, the combination of '420 with Birch fails to teach each element of the claimed invention, and thus fails to render the claims *prima facie* obvious. Accordingly, Applicants request that the corresponding rejection be withdrawn.

New claims 43 and 44

New claims 43 and 44 feature an oral care device having a rocking element with protrusions extending along the longitudinal axis of the oral care device. The protrusions include side surfaces that define an arc having a radius of curvature from about 0.150 to 0.175. None of the cited references alone or in combination teach or suggest protrusion having side surfaces defining an arc that has a radius of curvature from about 0.150 to 0.175. Accordingly, Applicants assert that new claims 43 and 44 are novel and unobvious over the cited references.

In view of the foregoing, Applicants request that all of the pending claims be allowed.

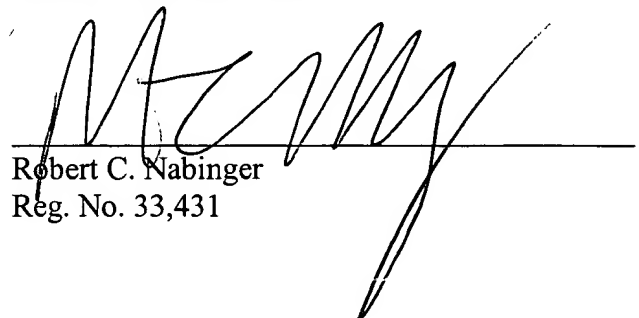
Applicant : Phillip M. Braun et al.  
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Applicants believe that no fee is due. However, if Applicants have reached this conclusion in error, please apply any charges or credits to deposit account 06-1050, referencing attorney docket number 00216-489001.

Respectfully submitted,

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Robert C. Nabinger  
Reg. No. 33,431

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110-2804  
Telephone: (617) 542-5070  
Facsimile: (617) 542-8906